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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-552

PHILADELPHIA NEWSPAPER PRINTING PRESSMEN'S UNION LOCAL NO. 16, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,

AND

BULLETIN COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 17-23) is reported at 443 F. 2d 863. The Board's decision and order (A. 252-301, Pet. App. 24-27)[1] are reported at 181 NLRB No. 95.

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[1] "A." references are to the appendix filed by the parties in the court below.

JURISDICTION

The judgment of the court of appeals was entered on July 22, 1971, and a petition for rehearing was denied on July 27, 1971 (Pet. 2). The petition for a writ of certiorari was filed on October 19, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that the union violated Section 8(b)(2) and (1)(A) of the National Labor Relations Act by causing the employer to deny employment to eight employees because they were neither members of the Union nor cleared for employment by it.

STATUTE INVOLVED

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*), are set forth at Pet App. 28-29.

STATEMENT

A. The Board's Findings of Fact

The Bulletin, a newspaper publisher in Philadelphia, Pennsylvania, is a member of the Newspaper Publishers Association of Philadelphia, which has a collective bargaining agreement with Local 16 of the Philadelphia Newspaper Printing Pressmen's Union covering journeymen, pressmen, apprentices, and junior pressmen or plate boys (A. 253; 54, 210-213).

The agreement provides, *inter alia*, that the Union will furnish the employer with "competent and skilled pressmen for the publisher's regular work force or extra work," and that the employer will be the judge of an applicant's "competency" (A. 253-254, 282; 79, 210).

A shortage of journeymen pressmen caused a dispute between the Bulletin and the Union as to the Bulletin's right to hire journeymen pressmen directly, rather than through the Union (A. 256-257; 67-70). After fruitless negotiations over the problem, the International Printing Pressmen's Union placed Local 16 under trusteeship for 18 months (A. 257; 69-70). The Union and the Publishers' Association then resolved the dispute by an agreement they called the "De Andrade Agreement," which provided that members of the Publishers' Association could hire directly journeymen pressmen who had not completed the International's apprenticeship correspondence course, but that their seniority would be less than that of "qualified" journeymen, *i.e.*, those who had completed the Union correspondence course (A. 257-258; 70, 92-94, 218-220).

For the next two years, the Bulletin did not hire any pressmen directly, but continued to hire those referred by Local 16 (A. 259; 84-85). The Union often could supply only apprentices who would have to be paid journeymen's rates or journeymen on their days off available only at premium rates (Tr. 62-63). In January 1969, however, the Curtis Publishing Company decided to discontinue publication of the Saturday Evening Post. Many laid-off Curtis pressmen, including Edward Henderson, applied to the

Bulletin for employment (A. 259; 9, 84-85). Bulletin Vice-President Spendlove advised Local 16's business manager, Jack Reilly, that it intended to hire Henderson, who had 20 years of experience with Curtis, and that it would follow the terms of the De Andrade Agreement (A. 260; 74). Reilly responded that the Bulletin had better not put Henderson to work "because it would cause trouble" (*ibid.*). Reilly discussed the matter with Local 16's executive committee, and then reported to Spendlove that "we have a real problem" because the executive committee believed that "the Union had the exclusive right to hire people." (A. 260, 77).

On January 17, Richard Cummings, a Curtis employee with 23 years of experience who was about to be laid off, went to Reilly, showed him his union card in the sister local organized at Curtis, and told him that he was interested in employment at the Bulletin (A. 262; 9-10). Reilly replied that Local 16 had 900 members and that he had to "protect his union membership," but that he would bring Cummings' request before the Local's executive committee (A. 262-263; 11). Two days later, Cummings filed an employment application with the Bulletin's personnel manager, who advised that she considered him a qualified pressman on the basis of his experience, that his application would be processed quickly, and that probably he would hear from her during the following week (A. 263; 11).

On January 27, Bulletin and Union representatives met in an effort to resolve the dispute over whether the newspaper could hire the ex-Curtis employees (A.

260-261; 77-78). Reilly asserted that the Union "had the exclusive right to hire" employees for the Bulletin pressroom. Spendlove, however, pointed out that the agreement did not convey that right, and that if such were the case there would have been no need for the De Andrade agreement (A. 261; 78). When Reilly claimed that the Curtis applicants were not qualified, Spendlove noted that the agreement makes the employer the sole judge of competency. He added that the applicants, who had 20 years of experience, were not only qualified, but were certainly more qualified than the inexperienced apprentices that the Bulletin was required to use as journeymen because of the shortage of skilled craftsmen (A. 261; 79, 210). The meeting ended with Reilly stating that the Union would supply the Bulletin with men, and that it "couldn't care less" about the men whose applications had been received (A. 261; 79).

On February 13, Local 16 met with the Publishers' Association. Spendlove produced a list of eight former Curtis employees who had applied to the Bulletin for employment, and again urged Local 16 to cooperate. Reilly and Local 16 President Mallon again stated that the Union had the exclusive right to hire, and that Bulletin "hiring should be done only on referral by the Union." Mallon further stated that the applicants would work "only under a court order" (A. 262; 83, 101-102).

On February 14, Cummings learned that Local 16's executive committee had tabled the question of what to do about ex-Curtis employees seeking Bulletin employment, and thereupon filed unfair labor practice

charges with the Board against both the Company and the Union (A. 262; 12-13; 193-194). He then went back to the Bulletin, but was not hired because the Company feared there would be a production slowdown if he was hired without union clearance (A. 262; 14). In March, the Union asked Cummings to drop the charges, process the case "through union channels," and place his traveling card with local 16 (A. 263; 15-17). On April 11, Reilly invited Cummings to attend a Local 16 executive committee meeting, at which Reilly asserted that Cummings was a qualified applicant because no one who has worked in the pressroom for 23 years is unqualified. Reilly added that, although Cummings' traveling card was tabled "because everything was frozen" until the International officials arrived in Philadelphia the following week, he would have no trouble at the Bulletin, if he was hired, so long as he cooperated (A. 264; 18-20).

On April 30, the Bulletin entered into a settlement, approved by the Board's Regional Director, in which the Company agreed to offer employment as journeymen pressmen to the eight named former Curtis employees and to post appropriate notices (A. 264; 86, 227-228). Thereafter, the Bulletin sent letters to the eight applicants offering them employment; six responded, and were interviewed and hired (A. 265; 20-22, 87, 125-126, 135). On May 20, the Company's production manager met with the pressroom foremen and explained the terms and significance of the settlement agreement. He also told the Union's chapel chairman that the required notices would be posted, and they were later that day (A. 265; 87-88, 126-128).

Following the posting of the notices, the Bulletin experienced production problems, which resulted in part from electrical switches being in improper positions, damage to the photo-electric cells controlling the movement of the reels, and the removal of contacts from the control board of reels (A. 265; 88-89, 121-124, 129-131). Assistant Business Manager Elliott complained to Reilly, who professed to know nothing about the problem. He said he would look into the matter, adding that "the union was concerned about the Curtis people" (A. 266; 105). Reilly also stated that he understood the Bulletin, in explaining the settlement agreement to its foremen, had instructed them to teach Curtis employees how to do the work. He warned that Local 16 would not permit foremen to assist the new employees, that they would have to prove their competence, and that the union members had been so instructed (A. 266; 105-107).

When production continued to fall, Spendlove instructed Production Manager Grant to take the Board notices down, and notify the Curtis employees not to report for work (A. 267; 89, 109). Grant carried out these instructions, informed the chapel chairman of his action, and asked him to get the men back to work (A. 267; 136). The chapel chairman returned later and told Grant that "the word had been passed" (A. 267-268; 136-137). There was an upswing in production for the rest of the day, and the following day the presses operated normally (*ibid.*).[2]

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[2] Assistant Business Manager Elliott later told Reilly that the notices had been taken down and the Curtis men instructed not to report, and asked whether this would resolve the problem

On May 26, the Bulletin notified the Board's Regional Director that, because of the "conduct on the part of members of * * * Local 16," the Bulletin found it impossible to comply with the settlement agreement (A. 268; 89-90, 229). The Regional Director withdrew his approval of the agreement, issued a consolidated complaint against both the Union and the Company, and petitioned the United States District Court for the Eastern District of Pennsylvania for an injunction against them, pursuant to Section 10(j) of the Act, 29 U.S.C. 160(j). On August 18, the Company and the Union entered into a stipulation whereby the Bulletin agreed to offer employment to the eight former Curtis employees, and the Union agreed it would not conduct any stoppages or slowdowns if they were hired (A. 268; 195-205, 230, 268).

On August 27, pursuant to the agreement, Cummings and Frank Roberts reported to work as pressmen (A. 268; 23, 138). From the beginning of their employment, they were subject to constant harassment from members of Local 16 who refused to give them assistance, stood around in groups staring at them while they worked, pelted them with objects, called them names, and splashed ink on their presses, in their clothes lockers, and on Cummings himself (A. 269; 24-30). The same conduct continued during the following week, and, on September 2, when two additional Curtis employees reported for work,

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(A. 268; 109). Reilly again professed no knowledge, but added that, if the Bulletin did have a problem, such action would resolve it (A. 268; 109).

all four employees were pelted with objects and subjected to ink pouring and other harassment (A. 269; 29). When Elliott told Reilly what was happening, Reilly responded that the Union was a highly responsible organization and that the Bulletin's troubles were of its own making (A. 270; 110-112). When Elliott added that the Bulletin would dismiss anyone caught in the act of sabotage or harassment, Reilly replied that, if it did, "there will be trouble" (*ibid.*).

Harassment continued (A. 270; 145-148, 158-159). The Union made no attempt to stop it (A. 296; 30). One of the four employees quit, and the rest were sent home at lunch time for their own protection, and have not been scheduled for work since (A. 270; 30-31, 75, 148-149).

B. The Decisions Below

Based on the foregoing facts, the Board concluded that the Union was responsible for causing the Bulletin to refuse to hire and to keep in its employ the eight former Curtis employees; that its motive in doing so was not because these employees were unqualified, but because they were not members of, or cleared and approved for employment by, the Union; and that the Union thereby violated Section 8(b)(2) and (1)(A) of the Act (A. 274-286; Pet. App. 24).[3] The Board, *inter alia*, ordered the Union to cease and desist from the unfair labor practices found, and made

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[3] The Board found that the Company, in turn, violated Section 8(a)(3) and (1) of the Act by acquiescing in the Union's demands (A. 286-287; Pet. App. 24). The validity of the findings against the Company is not in issue here

the Union "primarily liable," for back pay (A. 294-295; Pet. App. 26-27).

The court of appeals sustained the Board's findings and conclusions, and enforced its order (Pet. App. 17-23).

ARGUMENT

The petition rests on the premise that the court of appeals held that the Union violated Section 8(b)(2) and (1)(A) of the Act[4] without first determining that the Union was motivated by an intention to encourage union membership, rather than various beneficial motives which are suggested (Pet. 8-15). The Board, however, found that the Union caused the Company to deny employment to ex-Curtiss employees, not because they were unqualified or for any other legitimate reason, but solely because they were not members of the Union and had not been cleared for employment by it (A. 281, 284-285). The court of appeals correctly concluded that the Board's findings were "amply supported by the evidence" (Pet. App. 19). Accordingly, even assuming that specific proof of an intent to encourage union membership was required with respect to the blatant form of dis-

[4] Section 8(b)(2) makes it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)." Section 8(a)(3), in turn, makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization." Section 8(b)(1)(A) makes it an unfair labor practice for a union "to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7."

crimination which occurred here (see *Radio Officers* v. *National Labor Relations Board*, 347 U. S. 17, 44-45), there was such proof.

The only question really presented, therefore, is whether the court below correctly concluded that the Board's findings of Union responsibility and unlawful motivation were adequately supported by the record. Such an evidentiary issue does not warrant review by this Court. In any event, the facts summarized above show that there is ample support for the Board's findings.[5]

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[5] The Board's modifications of the standard remedy, making the Union primarily liable for backpay, was well within its discretion in such matters. See *National Labor Relations Board* v. *Lexington Electric Products Co.*, 283 F. 2d 54, 57 (C.A. 3), certiorari denied, 365 U.S. 845; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 184-185; *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U.S. 533, 540.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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